

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

NYS Supreme Court Decisions in Article 78
Proceedings

Court Litigation Documents

October 2020

Decision in CPLR Article 78 proceedings - Dennis, Richard

Follow this and additional works at: <https://ir.lawnet.fordham.edu/pdd>

Recommended Citation

"Decision in CPLR Article 78 proceedings - Dennis, Richard 2020-07-28" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/pdd/148>

This Parole Document is brought to you for free and open access by the Court Litigation Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in NYS Supreme Court Decisions in Article 78 Proceedings by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

At a Special Term of the Supreme
Court of the State of New York held
in and for the County of Onondaga on
July 28, 2020.

PRESENT: **HON. SCOTT J. DELCONTE**
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

In the Matter of the Application of

RICHARD DENNIS,

Petitioner

v.

Index No. 003102/2020

**NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION, ACTING COMMISSIONER, and
TINA STANFORD, CHAIRWOMAN, BOARD OF
PAROLE,**

Respondents.

DECISION AND ORDER

APPEARANCES:

Law Office of Ronald L. Kuby *by Rhidaya S. Trivedi, Esq. for Petitioner*

Office of the New York State Attorney General *by Ray A. Kyles, Esq. for Respondents*

This is an Article 78 proceeding challenging Respondent New York State Department of Corrections and Community Supervision Parole Board's denial of discretionary parole to Petitioner Richard Dennis, who has spent 49 years in prison for his unprovoked murder of an on-duty New York City police officer. For the reasons set forth below, the requested relief is **DENIED**, and the Petition is **DISMISSED**.

I.

In 1971, an intoxicated, 22-year old Richard Dennis stabbed Robert Denton, an on-duty police officer, in the neck with a 12-inch long hunting knife, killing him. Dennis was convicted of this unprovoked murder after trial and, on June 5, 1972, sentenced to 25-years to life in prison. This was Dennis' first – and except for a minor marijuana possession conviction in 1994 – only criminal offense. For the next 49 years, Dennis has behaved as a near-model inmate. His Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) scores, achievements while incarcerated, and demonstrated family and community support all indicate that he presents a low risk of recidivism or violence. Dennis has accepted responsibility for his actions, and expressed remorse. Nonetheless, he has been denied parole 13 times.

The most recent denial followed Dennis' August 27, 2019 appearance before Commissioners Coppola, Crangle and Demosthenes. After their review of Dennis' record, and an interview and discussion with him, the Commissioners ruled – by a 2 to 1 vote – that Dennis was ineligible for discretionary parole. After reciting the relevant statutory factors they considered in their Decision, and implicitly conceding that all but one of those relevant factors militated in favor of his release, the Board concluded that the gravity of Dennis' crime and the serious and senseless nature of the killing, alone, warranted denying his release. The Board then elaborated upon the seriousness of the circumstances surrounding the murder, observing that:

Records indicate that Officer Denton was standing outside a grocery store when you, unprovoked, stabbed him in the neck with a bone handled hunting knife and caused his death. ... This was a senseless act of violence upon not just a police officer, but another human being. That said, your release at this time would be tantamount to mitigating your actions and undermining respect for the law.

Dennis filed an administrative appeal. On April 3, 2020, the Appeals Unit affirmed the Board. Dennis then commenced this proceeding, seeking the Court to order a *de novo* review.

II.

The New York State Legislature has established a comprehensive mechanism within the State Parole Board for releasing individuals from the prison system, including granting discretionary release to those sentenced to indeterminate incarceration (Executive Law § 259-i). This discretionary release is based upon a Board finding that “there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law” (Executive Law § 259-i[c][A]). This determination must be based upon a review of eight enumerated statutory factors, which are set forth in Section 259-i(c)(A). As the Court of Appeals has explained, “so long as the Board violates no positive statutory requirement, its discretion is absolute and beyond review in the courts” (*Matter of Hines v State Bd. of Parole*, 293 NY 254, 257 [1944]). Under this current statutory scheme, the role of the courts following a denial of discretionary parole is limited to reviewing the hearing transcript and the written decision to determine whether the Board’s decision evidences a “showing of irrationality, bordering on impropriety” (*Silmon v Travis*, 95 NY2d 470, 476 [2000]; *Fraser v Evans*, 109 AD3d 913, 914-15 [2d Dept 2013]). In conducting this review, a court must be cognizant of the fact that the actual weight that the Board affords to any statutory factor is,

generally, within its discretionary power (*see e.g. Matter of Santos v Evans*, 81 AD3d 1059 [3d Dept 2011]). In other words, so long as the Board considers all of the relevant statutory factors, then any one particular factor can be sufficient to rationally outweigh all others and warrant denying discretionary release. This does not mean, however, that any one factor alone is always sufficient to rationally outweigh all others and warrant denying discretionary release.

Here, after reviewing the entire record, the only possible statutory factor that could form the basis for a rational denial of Dennis' discretionary release is the serious nature of the crime itself. However, the Fourth Department – along with the First and Second Departments, as well as the two-Justice dissent in *Matter of Hamilton v New York State Div. of Parole* (119 AD3d 1268 [3d Dept 2014]) – has held that the seriousness of the crime alone is not a rational basis to deny discretionary release, absent specifically articulated “significantly aggravating or egregious circumstances surrounding the commission of the particular crime” (*Johnson v New York State Div. of Parole*, 65 AD3d 838 [4th Dept 2009]). That the murder victim was a police officer is not enough (*King v New York State Div. of Parole*, 190 AD2d 423 [1st Dept 1993]). Accordingly, the sole question before this Court is whether the fact that Dennis stabbed Denton in the neck without provocation as he stood outside a grocery store – as specifically articulated in the Board's Decision – are sufficiently aggravating or egregious circumstances to rationally warrant denying parole after 49 years of incarceration.

Dennis' counsel zealously asserts that it is not rational basis to deny parole since Dennis' COMPAS scores indicate that he has been nearly fully rehabilitated with little danger of recidivism and has spent his entire adult life in prison as a model prisoner. Counsel also vigorously argues, emphasizing the Fourth Department's holding in *Johnson*, that the Board's Decision to continue

Dennis' incarceration after 49 years serves no purpose other than retribution because Dennis can never undo his killing.

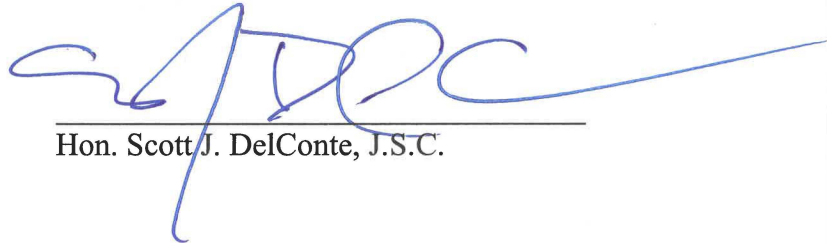
However, under New York's statutory system of discretionary parole, it is not irrational and bordering on impropriety for the Board to deny parole for Dennis' violent and senseless act of killing Denton by stabbing him in the neck, without provocation, even after 49 years of incarceration. Unlike the respondents in *Johnson* and *King*, who were convicted of accessory murder, the Board specifically articulated the aggravating and egregious circumstances surrounding Dennis' direct, intentional and deliberate role in Denton's murder – his unprovoked stabbing of a man in the neck. It is not irrational or improper for the Board – having considered all of the required statutory factors, and weighing the egregiousness of Dennis' actions – to deny Dennis' request for discretionary release.

III.

Accordingly, following due deliberation, it is hereby

ORDERED that Petitioner Richard Dennis' Article 78 application to vacate the Decision of the Respondent New York State Department of Corrections and Community Supervision Parole Board denying his discretionary release to parole and order a *de novo* hearing is **DENIED**, and the Petition is **DISMISSED**.

Dated: July 28, 2020



Hon. Scott J. DelConte, J.S.C.

ENTER

PAPERS CONSIDERED:

1. Petitioner's Notice of Petition, dated May 25, 2020;
2. Petitioner's Article 78 Petition, verified May 1, 2020, with exhibits 1 through 5;
3. Respondents' Answer, verified June 22, 2020, with Exhibits A through K;
4. Petitioner's Reply, dated June 25, 2020;
5. Respondents' Supplemental Verified Answer and Return, verified July 21, 2020; and
6. Rhidaya Trivedi Esq.'s supplemental letter brief dated July 21, 2020.